

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

KRYSTAL MEGAN DELIMA

PLAINTIFF

VS.

CASE NO. 5:17-cv-05244-TLB

WAL-MART STORES ARKANSAS, LLC

DEFENDANT

**BRIEF IN SUPPORT OF DEFENDANT'S
RESPONSE TO PLAINTIFF'S MOTION TO SUPPRESS ALL
PARTS OF KRYSTAL MEGAN DELIMA DEPOSITION TRANSCRIPT**

Defendant Wal-Mart Stores Arkansas, LLC (“Walmart”), by and through its attorneys, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., submits the following Brief in Support of its Response to Plaintiff's Motion to Suppress All Parts of Krystal Megan Delima Deposition Transcript (“Response”):

ARGUMENT

On October 18, 2018, Defendant took Plaintiff's deposition after the Court denied numerous written and oral motions to quash from Plaintiff. On Plaintiff's motion, the Court permitted Plaintiff to videotape her deposition as an additional method of recording. Plaintiff was able to compare the videotape of her deposition with the transcript and submit an errata sheet. In fact, Plaintiff submitted an eight-page errata sheet correcting what she claims were numerous errors in the transcript.

On October 29, 2018, Walmart filed its Motion for Summary Judgment (“MSJ”) (Doc. 44), and attached excerpts from Plaintiff's deposition in support of Walmart's MSJ. Walmart included excerpts from the rough draft copy of the transcript because that was the only copy available at the time. After Plaintiff submitted her errata sheet, Walmart supplemented its MSJ

on December 13, 2018, with a final version of the transcript, including relevant portions of Plaintiff's errata sheet (Doc. 72).

On December 11, 2018, Plaintiff filed her Motion to Suppress All Parts of Krystal Megan Delima Deposition Transcript ("Motion") (Doc. 70). Plaintiff requests that the Court suppress her deposition because Defendant, as well as the court reporter, violated Plaintiff's rights during the deposition and did not conduct the deposition in accordance with Fed. R. Civ. P. 30, and because Defendant pursued Plaintiff's deposition in order to gain evidence to use in its MSJ against Plaintiff. Plaintiff's arguments are simply without merit.

First, as the Court can see from the errata sheet, most of the errors Plaintiff identified are typographical in nature and did not substantively change Plaintiff's deposition testimony. Furthermore, Plaintiff provides no explanation or support for her argument that Alexander Real Time Reporting's (with whom Stevi Way, the court reporter at Plaintiff's deposition) preparation of the transcript prejudiced her in any way. As such, any irregularities in the transcript of Plaintiff's deposition are harmless. Plaintiff had an opportunity to, and did review her deposition transcript – presumably by comparing it to her videotape of the deposition – and submitted an errata sheet. Plaintiff has now corrected any errors any perceived errors in the transcript and provides no further justification for why the Court should suppress her deposition.

Finally, Plaintiff also argues the Court should suppress the transcript of her deposition because Defendant pursued her deposition to obtain evidence to use in its MSJ, which was detrimental to her case. Neither the Federal Rules of Civil Procedure, nor any other applicable rule, prohibits a defendant from taking depositions to obtain evidence to use in support of its defense. Such is the nature of civil litigation. Defendant had a right to take Plaintiff's deposition

and to file its MSJ within the time prescribed by the Court's Case Management Order in this matter.

WHEREFORE, for the reasons set forth above, Walmart respectfully requests that the Court deny Plaintiff's Motion and for all other just and proper relief to which it may be entitled.

Respectfully submitted,

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.
4206 South J.B. Hunt Drive, Suite 200
Rogers, AR 72758
(479) 464-5682 Phone
(479) 464-5680 Fax
kfreeman@mwlaw.com
bcrawford@mwlaw.com
jmcelroy@mwlaw.com

By: /s/ Karen P. Freeman
Karen P. Freeman, Ark. Bar No. 2009094
Bryce G. Crawford, Ark. Bar No. 2013045
Jacob A. McElroy, Ark. Bar No. 2017242

CERTIFICATE OF SERVICE

I, Karen P. Freeman, certify that the above pleading was electronically filed with the Clerk of the Court and the following person was served a true and correct copy of the above pleading, via email and U.S. Mail, postage prepaid, on December 19, 2018:

Krystal Megan Delima
54985 County Road 586
Kansas, Oklahoma 74347

By: /s/ Karen P. Freeman
Karen P. Freeman